

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:15cv35**

TERESA S. PRICE and THOMAS)
H. PRICE,)
)
Plaintiffs,)
)
v.)
)
U.S. GEAR TOOLS, INC., et al.)
)
Defendants.)
)

ORDER

Pending before the Court is the Motion to Compel Rule 35 Examination of Plaintiff [# 66]. Defendants move for the entry of an order pursuant to Rule 35 of the Federal Rules of Civil Procedure authorizing a physical examination of Plaintiff Teresa Price. On April 21, 2016, the Court held a hearing and orally granted the motion. The Court now enters this Order to memorialize its April 21, 2016, oral Order.

I. Analysis

Rule 35 of the Federal Rules of Civil Procedure provides that the Court may order a party whose physical or mental condition is in controversy to submit to an examination by a suitably licensed or certified examiner. Fed. R. Civ. P. 35(a)(1). The Court may order such an examination upon a motion demonstrating good

cause for the examination and after providing notice to all parties and the person subject to the examination. Fed. R. Civ. P. 35(a)(2)(A). Upon a review of the record, the parties' pleadings, and after the benefit of oral argument at the hearing, the Court finds that Defendants have set forth good cause for a physical examination of Plaintiff Teresa Price. The Second Amended Complaint contains a number of allegations concerning Plaintiff Price's cancer. (Sec. Am. Compl. ¶¶ 44-48, ECF No. 85.) Moreover, the Amended Complaint alleges damages, which suggest that Plaintiff Price's physical condition will be at issue in this dispute; Plaintiff has not limited her claim of damages to a decrease in property value and the loss of use and enjoyment of the property. (Id. at ¶¶ 68-70, 75, 81, 103-04, 107.) By placing Plaintiff Price's physical condition at issue, the Court finds that a Rule 35 physical examination is appropriate in this case, and Defendants have demonstrated good cause for the entry of an Order directing a physical examination of Plaintiff Price. The Court also finds that Dr. Brian Forrester is a board certified specialist in Occupational Medicine and is well-qualified to perform the examination.

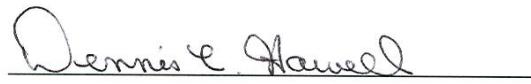
The Court **DIRECTS** Plaintiff Teresa Price to appear for a physical examination pursuant to Rule 35 at a time and location in Asheville that the parties mutually agree upon. If the parties are unable to agree upon a time and place to conduct the examination, the Court will set the time, date, and location of the

examination. Dr. Forrester shall perform the physical examination, which is limited to three hours. Dr. Forrester may obtain a full medical history of Plaintiff Price as set forth in Defendants' motion. In addition, the examination will be observed by a female not affiliated with any law firm who will be physically present in the examining room during the entirety of the exam.

II. Conclusion

Consistent with the terms as set forth in this Order, the Court **GRANTS** the motion [# 66].

Signed: May 5, 2016



Dennis L. Howell
United States Magistrate Judge
